

## **Title 19 – Environmental Protection**

### **Chapter 1 – Environmental Policy Act**

#### **Sec.**

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#### **Legislative History**

##### **Enacted:**

Environmental Protection, Ord. 177 (9/5/03), BIA (10/28/03).

##### **Repealed or Superseded:**

Tribal Environmental Policy Act, Ord. 168 (6/3/03), BIA (6/12/03) (repealing Ord. 43A).

Amending Ord. 58, Ord. unnumbered (7/12/89), Enacting Res. 89-7-65.

Establishing the Swinomish Cultural and Environmental Protection Agency, Ord. 58, Enacting Res. 88-4-18 (5/5/88).

Environmental Policy Act, Ord. 43A (11/3/77), BIA (2/3/78).

[Ed. Note. Ord. unnumbered (7/12/89) and Ord. 58 were repealed with Title 21 – Archaeological and Cultural Resources]

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#### **19-01.010 Title.**

This Chapter shall be referred to as the Tribal Environmental Policy Act.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.020 Purpose and Scope.**

- (A) The primary purpose of this Act is to promote the general welfare of tribal members and others living on Reservation lands, by creating and maintaining conditions under which humanity and nature can exist in productive and enjoyable harmony.
- (B) Specific goals are:
- (1) To ensure that the Reservation is safe, healthful, productive, and aesthetically and culturally pleasing;
  - (2) To preserve areas of historic, archeological and cultural significance;
  - (3) To ensure an environment that is compatible with the desired Swinomish lifestyle - present and future; and
  - (4) To attain the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable and unintended consequences.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.030 Authority.**

This Chapter is enacted in accordance with Article VI, Section 1(k), (l) and (r), of the Constitution of the Swinomish Indian Tribal Community.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.040 Jurisdiction.**

Jurisdiction over the people and property subject to this Chapter shall be to the maximum extent permitted by law.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.050 Findings.**

[Reserved]

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.060 Construction.**

[Reserved]

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.070 Definitions.**

- (A) **“Planning Commission”** means the Swinomish Planning Commission or its designee, except in Section 19-01.140, where it only means the Swinomish Planning Commission.
- (B) **“Planning Department”** means the Office of Planning and Community Development of the Swinomish Indian Tribal Community.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.080 Action Significantly Affecting the Quality of the Environment.**

- (A) The Planning Commission shall write or cause to be written a detailed statement for every action significantly affecting the quality of the environment. The statement shall include:
  - (1) The environmental impact of the proposed action;
  - (2) Any adverse environmental effects which cannot be avoided should the proposal be implemented;
  - (3) Alternatives to the proposed action;
  - (4) The relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and
  - (5) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.
- (B) The Planning Commission shall utilize a systematic, interdisciplinary approach, which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making that may have an impact on the environment.
- (C) The Planning Commission shall identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations. Federal or jointly developed federal-tribal environmental review documents may be considered in fulfillment of the requirements of this Chapter.

- (D) The Planning Commission may require proponents of an action to provide information or reports to assist in the determination of the environmental impacts and significance of such actions.
- (E) The Planning Commission shall study, develop and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.
- (F) The Planning Commission may develop a list of activities with no appreciable impact on the environment that are exempt from the requirements of this Chapter. The Planning Department may require the proponent of the action to submit information regarding the proposed action to determine whether the proposed action fits within one of the exemptions on the list.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.090 Preliminary Determination of Significance.**

- (A) The Planning Commission shall identify actions significantly affecting the quality of the environment.
- (B) In making this preliminary determination, the Planning Commission shall consider:
  - (1) Whether the action is highly controversial;
  - (2) Whether an otherwise minor action will have cumulatively significant impact;
  - (3) Any secondary effects;
  - (4) The nature of the setting where the proposed action would be taken;
  - (5) Any mitigation requirements, which will reduce the environmental effects of the proposed action; and
  - (6) All known and probable beneficial and detrimental environmental effects. Even if on balance the Planning Commission believes that the effect will be beneficial, the action may still have a significant effect on the environment.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.100 Use of Preliminary Determination.**

- (A) If the Planning Commission determines:
  - (1) That the action does not significantly affect the quality of the environment, it shall prepare a declaration of non-significance, which shall be located in the

Tribal Office and published in a local newspaper of suitable size and general circulation. No action shall be taken for ten (10) days following publication of such declaration of non-significance; or

- (2) That the action has a significant effect on the quality of the environment; it shall prepare a declaration of significance, which shall be marked and designated as such and filed in the Planning Department.
- (B) If the Planning Department issues a declaration of significance, the proposed action shall not proceed until the Planning Department issues an Environmental Impact Statement (EIS).

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.110 Draft EIS Preparation and Content.**

- (A) When an EIS is required, the Planning Commission shall prepare a draft EIS which shall satisfy, to the fullest extent possible, the requirements of Section 19-01.080.
- (B) The draft EIS shall include the following:
- (1) A description of the proposed action, its purposes and the environment, which will be affected;
  - (2) A description of any effect it may have on population or growth;
  - (3) The relationship of the proposed action to land use plans for the affected area;
  - (4) The positive and negative, known and probable, effects of the proposed action on the environment. This should include secondary as well as primary effects;
  - (5) Alternatives to the proposed action that might reduce or eliminate adverse impacts including sufficient analysis of the environmental benefits, costs and risks of such alternatives;
  - (6) A brief section summarizing those environmental effects discussed in Section 19-01.110(B)(4) that are adverse and unavoidable;
  - (7) A brief discussion of the extent to which the proposed action involves tradeoffs between short-term gains at the expense of long-term environmental losses, or vice-versa; and
  - (8) A description of those impacts discussed in Section 19-01.110(B)(6) that irreversibly curtail the range of potential uses of the environment.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.120      Agencies with Special Expertise.**

In preparing the draft EIS, the Planning Commission may consult with, and obtain comments from, agencies with special expertise.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.130      Circulation of Draft EIS.**

- (A) Copies of the draft EIS shall be kept in the Tribal Office for public inspection.
- (B) Copies of the draft EIS shall be sent to those agencies consulted during preparation of the draft EIS.
- (C) Any person may request copies of the draft EIS from the Planning Commission. Copies shall be provided at no more than the cost of printing and mailing.
- (D) A notice announcing the availability of the draft EIS shall be published in a local newspaper of suitable size and general circulation.
- (E) Agencies and the public shall have thirty (30) days to comment on the proposed action. The Planning Commission may grant a fifteen (15) day extension when it believes such an extension is necessary.
- (F) Copies of all the comments shall be kept in the Tribal Office for public inspection.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.140      Public Hearing.**

- (A) After publication of the draft EIS, the Swinomish Planning Commission shall hold a public hearing, whenever appropriate, for the consideration of environmental aspects of the proposed action and to provide the public with relevant information.
- (B) In determining whether a public hearing is appropriate, the Swinomish Planning Commission shall consider such factors as the magnitude of the proposed action, the degree of interest in it, the complexity of the issues, and the extent to which the public has already been involved.
- (C) Ten (10) days prior to the hearing, the Swinomish Planning Commission or its designee shall cause to be published a notice of the time and place of the hearing in a local newspaper of suitable size and general circulation in Skagit County.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.150 Preparation and Circulation of Final EIS.**

- (A) The Planning Commission shall review the environmental effects of the proposed action in light of the opposing views and responsible opinions that were brought to the Planning Commission's attention during the thirty (30) day comment period.
- (B) The Planning Commission should make meaningful reference in the final EIS to any responsible opposing view not adequately discussed in the draft EIS and should indicate the Planning Commission's response to the issues raised.
- (C) The revised EIS, together with substantive comments received on the draft EIS (or summaries thereof) shall be circulated in the same manner as the draft EIS.
- (D) If the Planning Commission determines that the draft EIS is sufficient and needs no revision, it shall circulate a statement to that effect. The draft EIS, together with the statement, shall constitute the final EIS.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.160 Planning Commission Decision.**

The Planning Commission may not take action on the proposal for seven (7) days after publication of availability of the final EIS.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).

**19-01.170 Repealer.**

This Chapter hereby repeals and supersedes Ordinances 168 and 43A.

**19-01.180 Severability.**

If any section, subsection, clause or phrase of this Chapter is for any reason determined to be invalid or unconstitutional, such determination shall not affect the validity or constitutionality of the remainder of this Chapter.

[History] Ord. 177 (9/5/03); Ord. 168 (6/3/03).